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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/501,438

07/13/2004

Andras Bertha

BERTHA-4

9435

30542 7590 04/10/2007  
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EXAMINER

KOSSON, ROSANNE

ART UNIT

PAPER NUMBER

1652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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30 DAYS

04/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20070328

DATE MAILED:

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Commissioner for Patents

Amended claims 4, 25, 26 and newly submitted claims 27-38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons. The original elected invention is directed to a method of isolating an anti-tumor substance, a protein, from colostrum. Applicant has changed the invention to a method of isolating an antibody from colostrum. The new invention (immunology-related) is not examined in this Art Unit or this Workgroup (the 1650's). Applicant has attempted previously to change inventions mid-prosecution, and it was discussed at length with Applicant's representative telephonically and in writing that this change is not permitted and is against Office Policy. See MPEP §§ 819 and 821. See also the letter mailed to Applicant's representative on August 4, 2006.

Because Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 4 and 25-38 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on March 19, 2007 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). Because Applicant's response is not a bona fide reply, the period for reply set forth in the prior Office action of April 25, 2006 is still running. This application will become abandoned unless Applicant corrects the deficiency and obtains the required extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee will be filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

As discussed in the letter of August 4, 2006, Applicant should note that if he wishes to pursue claims to a method of isolating an antibody from colostrum, he may file a continuation application, but not an RCE, and this new application will be directed to the appropriate art unit.

Rosanne Kossow

JON WEBER  
SUPERVISORY PATENT EXAMINER